

Mr. GRIFFIN'S

A P P E A L

TO THE

Right Hon. the Lords Commissioners
of the ADMIRALTY.

In a LETTER

To their Secretary,

AGAINST

The SENTENCE passed on him

AT A

COURT-MARTIAL,

Held on board his MAJESTY'S Ship
SOMERSET at *Chatham*, December 3,
1750.

L O N D O N:

Printed in the Year, 1751.

MR. GRIFFIN'S
APPEAL

TO THE
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of the Admiralty

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LONDON:
Printed by the Admiralty

A
L E T T E R

T O

Thomas Corbet, Esq; &c.

S I R,

THE more I reflect on the Sentence that has been lately passed on me by a Court-Martial, the more necessary do I find it, to lay before my Lords Commissioners of the Admiralty my Minutes, taken in Short-Hand, by a Person eminent for his Skill in that Art.

I HAVE the greater Inclination to do this, because he is ready, if called upon, to make Oath, That he took these Minutes with the utmost Care and Impartiality. And as for some Years past, he has been employed in all Causes of Importance, particularly in taking the Minutes at the late Lord *Lovel's*

A 2

Tryal;

Tryal; for which he was greatly distinguished by having the intire Approbation and Applause of the present Lord Chancellor, and the Managers of the Honourable House of Commons, I have great Reason to depend on his Accuracy.

I AM sensible their Lordships may have been furnished with Minutes from the Judge-Advocate; but were I ever so much convinced of his Fidelity and Exactness, as I can have no Recourse to them to quote the Evidence, and state my Case for their Consideration, they cannot serve my Purpose.

THEIR Lordships will observe, I have printed the Minutes I herewith send you, which I did to prevent the greater Trouble and Expence of transcribing, in order to supply each of their Lordships with a Copy to peruse at their leisure Hours, and to enable them thereby to form a Judgment with an intire Satisfaction to themselves.

I AM confident their Lordships will not think the Rank I have held in His Majesty's
Navy,

Navy, and the Manner by which I have unfortunately lost it, too inconsiderable to merit their Attention: I have implicit Faith in their Penetration, and whatever should happen to be my Fate after Judgment, I shall rest satisfied and unconcerned.

WHEN I sent my Copy to be printed, I had a Person in whom I could repose this Trust, to watch the Press, to prevent the Whole, or any Part of it being published: And in this, I dare say, their Lordships will believe me, for I flatter myself, they may have observed, tho' my Reputation has been greatly injured through the Malice of my Enemies, by industriously publishing in Daily Papers and Pamphlets, the most scandalous Falshoods, and taking every other Method to inflame the Public, and stir up a general Prejudice against me, yet I never made any Answer, but passively suffered them to go on, patiently waiting for my Deliverance, the Result of a Court-Martial: And now that has fallen so heavy upon me, I appeal only to their Lordships; being fully persuaded, they will attend with the greatest

Care

Care to the Evidence that has been given, and weigh with Justice and Certainty the Remarks and Arguments I offer to their Consideration.

THERE is no Failure or Neglect of Duty mentioned in my Sentence, so had their Lordships not indulged me in a Copy of the Resolutions of the Court, as the Ground of their Sentence against me, I should not have particularly known for what I was censured.

THESE Resolutions I have numbered, that I may avoid Repetition as much as possible, and refer to them the more readily.

THE Evidence I quote on this Occasion, I have mark'd with Letters referring to the Page where it is inserted, that their Lordships may be convinced I have done it with the utmost Fairness and Impartiality.

BY the Resolutions of the Court their Lordships will be pleased to observe, that my Conduct stands acquitted of every Part of
the

the Charge against me, from the Time of the Appearance of the Enemy, except that of not sending out a Cruizer in the Afternoon, to endeavour to observe whether they passed to Leeward or not; and that the whole Matter the Court has fastened on me is contained in their 8th, 9th, 10th, 11th, 12th, 13th, 14th, 21st and 22d Resolutions.

My Offence being thus pointed out, I shall carefully peruse and examine the Facts upon which it is grounded, I shall enquire upon what Foundation the Opinions of the Court stand, and whether, indeed, I have not been censured without Proof, and a criminal Construction been forced upon every Part of my Conduct, only to support such a Sentence.

In doing this, I shall take the Liberty to recapitulate the whole Proofs that have been brought on this Occasion, both by way of Charge and Defence, so far as they relate to the Resolutions against me and Sentence.

THE Method I shall observe for the more clear stating my Case, shall be to lay every particular Branch of Evidence before their Lordships, and to distinguish the several Parts of my Accusation, and consider them separately to avoid Confusion, and to be the more exact in what I have to offer.

I HOPE I shall have their Lordship's Indulgence for taking up so much of their Time as this will require, but I shall endeavour to be as brief as the Nature of the Thing will admit, and will intrude on their Patience as little as possible.

THE first Thing to be considered is the Intelligence I received of the Approach of the Enemy; for on that depends, in a great measure, the Propriety and Rectitude of my Conduct, as well as the Justice of the Sentence against me

IT does not appear that I had this Intelligence sooner than early in the Morning on the 10th of *June*, and that it was brought
into

into *Fort St. David's Road* by the *Lively*, about Midnight, altho' I am accused in the first Article of the Charge, with there being in the Months of *May* and *June* 1748, and for two Months before, a constant Likelihood of Engagement by the Approach of a Squadron of the Enemy's Ships.

IT is very unfortunate for me, That the Court (tho' it well deserved Attention) has not thought proper to come to a Resolution on the Force of the Enemy, by the Information so received,

IT will be admitted, I hope, that Intelligence so sure and certain as this was, ought to be the Guide of every military Operation, the Plan and Measure of our Conduct; else indeed the Commission, the Honour, and even the Life of an Officer must stand on a very precarious Footing; that it has not been considered as such in my Case, let me see what the Evidence say on this Head.

B

LIEUT.

LIEUT. *Drake* (a) of the *Lively*, swears, That between 11 and 12 on the 9th at Night, he went on board my Ship the *Princess Mary*, and acquainted the Commanding Officer, That the *Lively* had been chased by a Squadron of strange Ships off *Negapatam* so far as *Trincobar*, and they brought too off *Carrical*, and that it was Captain *Parker*, his Captain's Opinion, that they were eight large Ships and one small Vessel.

HIS Testimony is corroborated by the Evidence for the Crown, where Capt. *Boys* (b) says, having called on board my Ship in his Way off, on the 9th in the Night, he had an Account they were nine Sail, seven of them large Ships.—He further adds, (c) that in the Morning he went on board of me a second Time to hear of Capt. *Parker*, who he knew was there, the Particulars of what he had seen of the Enemy's Ships; and the Account he had before received was confirmed by Capt. *Parker* in every Parti-

(a) page 104. (b) page 12. (c) page 13 & 15.

cular, and that by their Built, they were *French Ships*.

THE Captains *Amberst* (*d*) and *Tiddeman*, (*e*) who went and sent on board the *Princess Mary* on this Occasion, have both declared from the Account they had, they were nine Sail of large Ships, and were *French Ships* of War. Capt. *Parker* (*f*) who was chased by them, says, That three of the nine Sail he took to be from sixty to seventy Guns.

THIS being the Intelligence I received of the Approach of the Enemy, and the Evidence given in support of it not in the least controverted, I shall also state the Condition of the Squadron I had the Honour to command, according to the Evidence given.

IT is notorious, and there needs not the quoting of any particular Evidence to support it, That His Majesty's Ships then in *Fort St. David's Road*, were the *Princess Mary*, *Exeter*, and *York*, of sixty Guns each. The *Preston*, a bad fifty Gun Ship, as it ap-

(*d* page 32.) (*e* page 46.) (*f* page 69.)

pears

pears by her being soon after condemn'd; the *Medway's* Prize of thirty-eight Guns; with two forty Gun Ships without Rother, and two arm'd *India* Ships of thirty Guns each, mostly mann'd with *Blacks* with few white Men on board; the *Harwich* being then four Leagues to Leeward off *Ponticherry*.

THE Result (g) of the Council of War signed by all the Captains, shews we were considerably short of Complement, besides our having many sick Men on Shore at the Hospital.

CAPT. *Amberst* (b) of the *Preston*, says, he was sick and short of Complement thirty three Men. Lieut. *Cowe*, (i) of the *Harwich*, that there were forty of their Men sick on Shore; Lieut. *Rusworth* (k) of the *Exeter*, acknowledges to have received on the 10th about Noon, sixty-three recovered Men from the Hospital, besides fifty in the Afternoon from the *Eltham*: His Evidence is confirmed by Mr. *Sutherland*, (l)

(g p. 137) (b p. 36) (i p. 96) (k p. 113) (l p. 147)

Master

Master of the same Ship. And it appears by Capt. Nucella's (m) Evidence, that Capt. Powlett having been called on board of the *Princess Mary* some Hours afterwards to a Council of War, represented to me, he wanted seventy odd Hands. Lieut. Cowe, (n) of the *Tork* says, they were thirty Men short of Complement, and had twenty-five Men sick ashore. Lieut. Fletcher (o) of the *Medway's* Prize, that they were thirty-one besides the *Princess Mary* and *Harwich* with other Ships, being short of Complement; the Number of which is not given in Evidence; the whole of these Sums amount to two hundred ninety two.

HAVING thus impartially stated the Intelligence received, and the Condition of my Squadron, their Lordships will be the better able to judge whether the Court had not sufficient Matter to come to a Resolution thereupon.—Why it was omitted I cannot suggest any Reason: For if by the Intelligence it appeared the Enemy's Squadron

(m p. 58) (n p. 155) (o p. 156)

was

was stronger than his Majesty's, so circumstanced and situated, I have great Cause to lament the Omission, and if on the contrary, it could be imagin'd or suppos'd we were equal; or that the Enemy was inferior, a Resolution on so essential a Point would have justified and supported the Sentence against me.

INSTRUCTED as I was, I could not possibly think otherwise than that the Enemy was superior; at least that they thought themselves so, and that they were certainly coming to attempt our Defeat.—Nay, even for some Hours after they came in Sight, till they haul'd their Wind about 4 o'Clock, it was the general Opinion they were coming down to attack us.

IN the first Council of War that was held, the Determination of which was sign'd by all the Captains, these Words are inserted, *viz.* “ (q) The Commodore call'd the Council to ask their Opinions what

“ Method they think best to engage the
 “ Enemy, who they perceive are coming
 “ down upon them.”

THE Captains *Amberst* (r), *Tiddeman* (s),
Nucella (t), and *Parker* (u), particularly de-
 clare this Fact, and that while the Council
 was sitting every Member of it thought so;
 infomuch that Capt. *Amberst* (x) says, that,
 Concern was exprefs'd several Times at the
 Council, that the Enemy came so near, and we
 had come to no Resolution; and an Attack
 from the Enemy was so generally believ'd,
 that Capt. *Barron* (y), of an *East-India* Com-
 pany's Ship, declares, Capt. *Carteret* desired
 Leave of me to go on board of his Ship as
 he lay the outermost of all, and was afraid
 of being cut off by the Enemy.

To sum up all the Strength of the Reso-
 lutions against me, they amount to this,
 that after distributing the two forty Gun
 Ship's Men among the rest of the Squadron,
 I ought to have immediately sail'd into the

(r p. 39) (s p. 53) (t p. 66) (u p. 75) (x p. 38) (y p. 87)

Offing

Offing with the Land Breeze, and consequently that waiting for the Junction of the *Harwich*, then four Leagues to Leeward of *Fort St. David*, endeavouring, in the mean Time, to hang both or either of the forty Gun Ship's Rothers, or contriving some Method to make them steer, or of Use in attacking the Enemy or defending ourselves, and taking the recovered Men from the Hospital, tho' many short of Complement, as well as every other Method I took to make our Squadron more formidable, and protect the Settlements under my Care, were not only unnecessary Steps, but so highly blameable, as to deserve the heavy Censure that has fallen upon me.

THE 8th and 9th Resolutions are the Foundation of all the rest against me, as well as that of the Sentence, which adjudges me to have negligently performed my Duty.

THE Substance of these two Resolutions are, That when I got on board of my Ship, after receiving the Intelligence of the Approach of the Enemy, I did not immediately

ately take the most expeditious Methods for putting the Squadron in a proper Condition for Fight, by taking the Men from the two forty-Gun Ships without Rothers, and distributing them among the rest of the Squadron.

My Charge in the 3d Article, explains the Squadron's being put in a fit Posture for Fight, by moving and separating themselves from the Merchant Ships they lay intermixed with; the 9th Resolution (*a*) of the Court determine the most expeditious Methods for putting the Squadron in a proper Condition for Fight, to be, by immediately taking the two forty-Gun Ship's Men and distributing them among the rest of the Squadron.

THE Delay of the Distribution of these Men in the Morning, or at any other Time of the Day, is no Part of my Charge, and therefore the Court seems to have catch'd it for want of other Matter to ground their Resolution upon, that I had not taken the

(*a* page 160)

most expeditious Methods for putting the Squadron in a proper Condition for Fight.

BUT in this I am adjudged to be guilty of a Failure with which my Prosecutor has not accused me, and what is very extraordinary, tho' the Court thought it just to acquit me of the Matter charg'd against me in forbearing on the 11th to go in quest of the Enemy, because it was the Opinion (*b*) of the Majority of the Captains not to sail till Ten at Night, yet they have taken hold of Matter not mention'd in my Charge to fasten a Crime upon me, notwithstanding it was the Opinion of a Council (*c*) of War even so late in the Afternoon as three o'Clock, only to take one of the forty Gun Ship's Men to mann the rest of the Squadron, and the other to go upon Service.

ALL the Captains (*d*) have confirmed by their Evidence, that the Result of this Council was to divide the *Eltham's* Men, and to take the *Pearl* into the Line, and if neces-

(*b* 24 Resolution, p. 162) (*c* p. 137) (*d* p. 21, 38, 47, 48, 59, and 69.)

fary, to be tow'd by the *Harwich*. Attempts were used to prove in support of the Charge, that the Squadron lay intermix'd with Merchant Ships, and consequently we were not in a fit Posture for Fight.

THE Captains *Boys* (e), *Amberst* (f), and *Tiddeman* (g), with Capt. *Barron* (b) of an *East-India* Company's Ship, who gave their Evidence on this Point, with earnest Inclination and Fervency of Heart, say in general Terms, that the Squadron lay promiscuously in a very irregular Manner, intermix'd with Merchant Ships: But when they were strictly and particularly examin'd on that Head, and called upon even to name one Merchant Ship, they were reduced to the Necessity of mentioning an arm'd *Indiaman* which was one of my Squadron, and a Country Ship the *Danbury*, which I put them in Remembrance of myself, loaded with Provisions from *Bengal*, and which lay among us for the Conveniency of distributing the same.

(e page 8 and 11) (f p. 30) (g p. 45) (b p. 90, 91)

THESE

THESE Gentlemen (*i*) may be truly said to affirm and deny in one Breath, the same Transaction, whereby they have brought Dishonour upon themselves instead of what was injuriously intended by it.

THIS Attempt to prove Negligence upon me, was render'd abortive by their own Testimony; nay, even Capt. *Tiddeman* (*k*) and *Barron* (*l*) themselves, acknowledge the Squadron to have laid in a proper Birth, and that they might have gone to Sea any Time that Day, conveniently from where we lay, without endangering ourselves or the Merchant Ships in getting under Sail: Farther, Capt. *Vincent* (*m*), and Capt. *Brown* (*n*) of an *East-India* Company's Ship, both declare against any Merchant Ships being anchor'd among us; and Capt. *Brown* adds, we lay in a proper Birth, so as to have gone to Sea at any Time without the Interruption of any other Ship.

(*i* p. 11, 28, 32, 45, 46, 52, and 91) (*k* p. 53) (*l* p. 90) (*m* p. 78) (*n* p. 84).

UPON

UPON this Matter so fully prov'd in my Favour, and so strongly asserted in my Charge, the Court has omitted coming to a Resolution.

IT is not hinted, or attempted in the least to be prov'd, that we were not clear'd and ready for Action, upon this I might very well rest it; but the Captains and Officers (o), by their concurrent Testimony, have given full and positive Proof, that every Ship of the Squadron was clear'd and ready for Action; the Squadron was unmoor'd and short, and it was so small, that to get under Sail and be form'd into a Line of Battle required a very little Time.

IT appears, That as soon as the Intelligence of the Enemy's Approach reach'd me ashore, which was at four o'Clock, that I got off and was on board about Five. The 7th Resolution (q) of the Court confirms this Fact, and *Haman* (r), who was my

(o p. 13, 32, 46, 76, 83, 85, 114) (q p. 159) (r p. 153)

Secre-

Secretary, says, I call'd him in my Shirt, and set out from the *Garden-House* at a Quarter after Four.

AT dawn of Day, the Time I got on board my Ship, all the Witnesses agree in the Facts, that the Fore-top-sail was loos'd, the Signal for sailing, the *Harwich* was called in from off *Ponticherry*, and the sick Men from the Hospital were sent for.

THE Master (s) of the *Princess Mary*, my Ship, says, I order'd every Thing to be clear'd for weighing, and enquired of him whether the small Anchors were ready, which he told me he had got on board.

CAPT. Boys (t) says, that having come on board to receive my Orders, I told him he must go to Sea with me, and steer with a Sweep as well as he could, and that in consequence of which (u), he had fitted a Spar for that Purpose, which if it had not broke, would have done: This was not

(s p. 18) (t p. 13, 69) (u p. 14, 15).

aiming at an Impossibility, for it was a very practicable, feasible Thing; and if the Spar was not large enough, as he confesses himself, which occasioned its breaking, it was surely his Fault, not mine: Nay, so loath were the Captains to part with this Ship, even after the Sweep had broke, and the Enemy had been in Sight some Hours, that they agreed in the first Council (x) of War that was held, to carry this Ship on Service, and tow her into the Line.

AMONG the many Instances of steering with a Sweep, I will only mention two; the first is the *Burford* of 70 Guns, which then bore the late Lord *Torrington's* Flag, having in her Return home from the *Baltick* in the Year 1717, struck on the Tail of the Sunk, and knock'd off her Rother, was enabled by a Sweep to work up the *Swine* to the *Nore*. The other is that of a 60 Gun Ship from the *West-Indies*, that got into *Mounts-Bay*, and afterwards proceeded to *Plymouth*.

(x p. 137 and 138).

CAPT. *Tiddeman* (*y*) declares, I made his Signal at five o'Clock in the Morning, and when he came to me, upon my desiring to know whether there was a Possibility of getting his Rother fix'd in any manner that Day so as to steer, he told me, he would go ashore and see, which he did accordingly, but found it impracticable, tho' he had all possible Assistance, and he did not return with his Answer to me till half an Hour past eleven Clock.

HERE the Captains of both the forty-Gun Ships gave me Hopes of their being able to act, at least they were far from objecting to the Probability of it; and the Land-Breeze was quite spent before I could possibly know our Endeavours were fruitless: Next Morning both their Rother (*z*) were hung, which shews how little a Time was necessary to carry our Point.

It has been fully proved, that no Time was lost in bringing the recovered Men

(*y* p. 47) (*z* p. 25, and 48.

(*a*) off

(a) off from sick Quarters, which in the Whole, together with those short of Complement, amounted to a much greater Number than could have been taken from the two forty-Gun Ships. But upon the strictest Inquiry that could be made by the Court, it having been found impossible to have got them on board time enough to save any Part of the Land-Breeze in order to move into the Offing, unfortunately for me, this Measure has been condemned as improper, and not being an expeditious Method to strengthen our Squadron.

HAVING thus shewed by the Evidence given, that the Ships were ready and clear for Action, the Men brought off from the Hospital with the greatest Expedition, I humbly hope all Circumstances being considered and duly weighed and allowed of, their Lordships will think I employed my Time properly and judiciously, and not without the Probability of getting one or both of the forty-Gun Ships in a Condition to Act.

(a p. 76, 106, 152).

D

THE

THE Substance of the 10th, 11th, 12th, 13th, and 14th, Resolutions against me is, that I did not sail with the Squadron into the Offing, tho' I might have done it, while the Land-Breeze lasted; and that it is the Opinion of the Court, I ought to have made that Motion, and not given the Enemy an Opportunity of prosecuting their Designs without Interruption; by which Means I should have been better prepared either to receive, or avoid them, if they intended to attack me, and better enabled to watch or pursue them, and prevent their Designs, in Case they endeavoured to avoid me; and that placing my Squadron in such Manner, I should have been equally able to protect *Fort St. David and Cuddalore.*

I SHALL now proceed to consider what Evidence has been given in support of these Opinions, together with the Facts upon which they are grounded.

BEFORE which, I cannot but observe, that the least Delay to the Distribution of the forty-Gun Ships Men, which has been deter-

determined by the Court, to be the Step I ought to have taken, or looking round me to try to get one or both Ships in a Condition to go upon Service, would have prevented the Squadron's getting a sufficient Offing, in order to command the Coast; and even as it is, I shall make it appear, that the Matter given in Evidence, upon which the Opinions of the Court are founded, is so loose and uncertain, that without considering the Force of that given in Contradiction thereto, it will not bear Examination.

By the Testimony of Captain *Tiddeman* (*b*), who says, If we had begun early in the Morning, he believes we might have got out by Noon, the Hesitation of an Hour or two at most, would have lost me the Opportunity of getting out with the Land-Breeze. Other Witnesses, whose Evidence I shall quote presently, say, this Motion would not have answered any Purpose, and would have been improper.

UPON so small a Hinge as an Hour or two, nay, perhaps, less than either, does the

Censure of the Court turn; and if I did not idle away that little Space, nor was misled by the Intelligence I received, according to all Circumstances with the Reason and Sense of Things, I can't conceive with what Propriety and Justice the Stain of Negligence can be fixed on my Conduct.

ADMITTING, indeed, I could have foreseen, what the Court knew before the Issue of my Tryal, that the Enemy would avoid me, and act in the Manner they did, then their Opinions, severe as they are, might have carried some Force with them: But as there is not the least Circumstance or Probability by which I could imagine such a Thing possible, and I had the most ample Proofs next to Certainty itself, of the Approach of an offensive Enemy coming to attack me, why was I to leave the Spot, where the Stay of every Moment strengthened my Hands, and while the Enemy were yet unseen?

I MAY well say I was astonish'd and shock'd to find that Part of my Conduct, which

which I thought so proper and justifiable, construed in such a Light as to appear negligent and criminal.

It is far from being a clear Point, that a Ship will always get to Windward by standing out with the Land-Breeze, and coming in with the Sea-wind: In the Monsoon Time which this was, it entirely depends on the strength of the Current and the Favour of the Sea Wind, or it's coming well out of the Sea, which alters greatly; (c) but the certain Consequence of little Wind, or a Calm, which frequently happens, is being drove greatly to Leeward.

CAPT. *Nucella* (d) admits, that Ships having attempted to get to Windward have been drove to Leeward: He owned he had often heard so, and allowed it to be so.

CAPT. *Tiddeman* (e) declares, it was an infinite deal of Trouble for the Squadron to get up from *Madras* to *Fort St. David*, the Distance of twenty Leagues, and he

(c p. 67) (d p. 68) (e p. 56).

never knew Men so work'd in his Life for eleven Days.

CAPT. *Weston* (*f*) of an *East-India* Company's Ship, says, That when he was ordered to *Negapatam*, instead of getting to Windward he was drove seven or eight Leagues to Leeward; and that he was seven or eight Days in getting up again.

CAPT. *Fisher* (*g*) of an *East-India* Company's Ship, says, That he was six Days in getting three Leagues, and he anchored twice a Day.—He adds, that sometimes the Current will run two or three Knots, and at other Times one and a half.

Mr. *Woodson* (*b*) Master of the *Preston*, says, That he was once seven Days in getting eight Leagues: This Person having had five Years Practice, adds, that the Current that Day run about a Knot and a half.

John Martin, (*i*) Mate of the *Princess Mary*, declares, he try'd the Current that

(*f* p. 94, 95) (*g* p. 143) (*b* p. 146) (*i* p. 149)

Day

Day, and he found it to go one Knot and five Fathom.

IT would be very tedious to quote all the Evidence given on this Point; it is sufficient to say, That these are Men of Experience and long Practice on this Coast; their Testimony is positive, full and strong; and it is confirmed and corroborated by most of the Witnesses examined either for or against me.

THIS being the Case, which I knew full well from my own Experience on this Coast, and the great Difficulty of getting to Windward in the Monsoon Time, being generally allowed and proved to be exceedingly precarious and uncertain, depending on Circumstances, and subject to a Variety of Accidents; what Inducement, admitting I had none to tempt me to stay, in order to strengthen myself against an offensive Enemy, could I have to sail with a Squadron of foul Ships, early in the Morning with the Land-Breeze, in quest of an Enemy, not yet in Sight, and who did not make their Appearance for seven or eight Hours afterwards?

IT

IT has been urged against me that the *Harwich* got to Windward, consequently that I could; but I appeal to their Lordships for the Equity and Justice of this Reasoning. Could I possibly foresee at five o'Clock, or at any Time before the Sea-Wind came in, which was about One, that it would come so far out of the Sea, and so greatly assist her? besides there is a Bending on that Part of the Coast which particularly favoured her; and likewise there is a good deal of Difference between the working of a Squadron and a single Ship; and that Ship too the cleanest of us all, and the best Sailer.

FROM what has been observed, and the Instances quoted, it was very extraordinary for the *Harwich* to get so far to Windward; it was the most I could expect, if not more, when I made her Signal, that she would be able to join me.

Mr. *Corve*, her Lieutenant, who swears with great Extravagance, and exceeds every Witness in support of the Charge against me,

me, Attempts to prove the *Harwich* could have fetched four Leagues to Windward of Fort St. David, and even ^{up to} the French Squadron; but being strictly examined on this Point, he falls into the most notorious Absurdities, Blunders and Self-Contradictions; upon which the Court (k) declare their Opinion that he must be mistaken.

CAPTAIN Vincent (l), Mr. Martin (m), Lieut. Frazier (n) and Mr. Cannon (o) Master of the *Harwich*, positively contradict this Witness; and the two latter, both declare, the *Harwich* could not have fetch'd above two Miles further to Windward than where she did.

Now that I am on the Subject of the *Harwich*, to avoid the Trouble of taking it up again, I must observe, that the Court, who have given it as their Opinion in the 13th Resolution against me, "That by failing with the Land-Breeze I should have been better prepared either to receive or avoid the Enemy, to watch or pursue

(k p. 103) (l p. 79) (m p. 150) (n p. 108) (o p. 110)

E

" them

“ them, and equally able to protect *Fort St. David* and *Cuddalore*”—have forgot the Circumstance of the *Harwich* being four Leagues to Leeward: For surely it can never be asserted, that by the Means of my sailing, that Ship would have been equally able to have joined me; nor can it be imagined the Court would have had me gone to have attack’d the Enemy without her, unless I had found them to be inferior to me.

By failing and getting to Windward with the Squadron, I not only forsook every Attempt to have made it more formidable than it was, when I first received the Intelligence of the Enemy’s Approach; but weaken’d it by going from the Force of a fifty-Gun Ship. If I got to Windward, how was it possible for her to join me? In that Situation, if the Enemy approached, I must either have fought without her Assistance, or play’d the Fugitive to Leeward wherever she happen’d to be: How reproachful and ignominious would such a Motion have been? And if she had happened to be to

Lee

Leeward of *Fort St. David*, which might have very probably been, I must have engaged without her, or run and left the Settlements with the dismantled Ships, and Trade, exposed to certain Destruction.

I AM very unfortunate, that the Court did not remember so material a Circumstance, every way so worthy their Consideration, before they came to this Resolution; and it is with a good deal of Concern I find That urged as the Result of Judgment, which can have no other Foundation than in Opinion only, which, generally speaking, is nothing else but mere Fancy and Imagination.

I Now come to state the Evidence given with regard to my sailing with the Land-Breeze in the Morning, in order to shew, whether Judgment has been formed agreeable to the Evidence that has been offered on this Point; for as the Perspicuity or Uncertainty of that appeared, Justice required a Determination accordingly.

THE Court having been pleased to ask Capt. *Boys* (q) Whether by failing in the Morning I could have got the Length of the Enemy's Ships, had they laid to, by carrying a press Sail, or by any other Means? He answers—It was impossible: They were a great Way to Windward that Morning. If we had gone out with the Land-Wind, the Current run strong, and in all Probability, we might have lost Ground by running out, 'till the Sea-wind came in. There was no Advantage to be taken but by the Sea-Wind: And therefore if a Ship has only two Leagues to get to Windward, she will not be able to do it in the whole Day, without taking the Advantage of the Sea-Wind. He likewise adds, that thereby we might have continued the Chace, and might have endeavoured to have come up with the Enemy, and might have drove them off that Coast; but as we lay, it was impossible to have got up and joined them.

IT is somewhat extraordinary, that a Question should be asked, as it is fixed to

(q page 18, 19).

the

the Morning while the Land-Breeze lasted; which is impossible to answer with any Probability, much less with any Certainty. Could any Body say, without the Gift of Divination, where the Enemy was at any Time that Morning; for they did not come in Sight 'till long after the Land-Breeze ceased; and if Facts with Opinions founded on them, are not better ascertained than these, can their Lordships be induced to think I have deserved the severe Penalty inflicted upon me?

CAPT *Amberst* (r) says, by going out I should have commanded the Sea-Wind, which always comes in with the Afternoon; and by being out, I should have been more capable of coming up with the Enemy, and they were expected to come in Sight every Minute.

THIS is the whole Matter of the Evidence that speaks on this Point against me, without the least Extenuation, and I have stated it as strong as it will bear.

BEFORE I recite the Evidence in Contradiction to these Conjectures, it deserves to be considered, whether there was little Wind, or a fresh Breeze that Morning; for tho' the *Harwich* might have a Breeze in the Offing, there might be little in Shore. Capt. *Brown* (s) says, there was very little in the Morning, and variable; Capt. *Weston* (t) says, there was some Wind, not much of it, which came off the Land in the Morning about five o'Clock, and continued till Ten or Eleven, when there was an Interval of Calm, which generally happens to be an Hour or two (u) between that and the Sea-Breeze. Mr. *Sutherland* (x) says, that there was but a moderate Breeze in the Morning, and little Wind from nine o'Clock till Noon. And Lieut. *Drake* (y), that I could not have got above three Quarters of a League.

CAPT. *Parker* (z) says, he is certain I should have lost Ground by going to Sea any Time that Day; there being a Shoal at *Coldroom*, a little to Windward, where the

(s p. 83) (t p. 93) (u p. 73) (x p. 147) (y p. 104)
(z p. 71).

Current runs strong. And in another Place (a) he says, by sailing in the Morning I could have had no Advantage in getting up sooner with the Enemy.

CAPT. *Brown* (b) being asked, whether by going to Sea in the Morning, there would have been any Probability of getting up with the Enemy; Answers, We did not see them in the Morning, not till Two in the Afternoon; but being asked again, from the Time he saw them; he says, he is confident it was impossible.

CAPT. *Weston* (c) says, we ought not to have gone out sooner than we did; for if a Calm had happened while we had been out of Soundings, and the further out, the stronger is the Current, we never could have fetched the Place we went from.

LIEUT. *Frazier* (d) says, that by sailing any Time that Day, we could not have near'd the Enemy, but must have encreased our Distance after the Sea-Breeze came in.

(a p. 154) (b p. 85) (c p. 93) (d p. 108).

Mr.

Mr. *Cannon* (e), who being Master of the *Harwich* and under Sail, from which he was more enabled to form a Judgment, declares, that we could not have been so near the Enemy if we had gone out with the Land-wind in the Morning, as we were by laying still.

Mr. *Sutherland* (f) being asked, Whether if I had failed at nine o'Clock in the Morning, I could have got an Offing without losing Ground; Answers, He imagines not; because as we must have laid out with our Heads to the SE, we could not have made a better Course than East; and it would have been worse when the Current came abroad-side.

CAPT. *Hutchinson* (g) says, That he cannot give any Reason why we should have failed with the Land-Wind in the Morning; but if indeed the Enemy had been no farther off in the Morning than they were at Six in the Afternoon, then he thinks there

(e p. 110) (f p. 147) (g p. 144).

might

might have been a Chance of forcing them to an Engagement, but we did not see them 'till between Twelve and One ; and 'till then we did not know but they might have taken the Rout to the Northward, without coming in Sight of *Fort St. David's Road*.

THIS general concurrent Proof in my Favour, is farther corroborated by many Circumstances, and the Testimony of other Witnesses, which would take up too much of their Lordship's Time to ennumerate. And as in stating this Point for and against me, I have neither extenuated nor exaggerated, it is impossible for me to shake off my Surprise, to find such doubtful, weak and insufficient Evidence construed Criminal, where a Man's Reputation, and all that is interesting are concerned, in opposition to positive, real Evidence, and such, as in Justice and Equity ought to have prevailed.

THE Court, as I humbly apprehend, in order to enable them to form a Judgment with a more intire Satisfaction to themselves, or to enforce and strengthen their own Opinions,

nions, have been pleased to ask Questions of Opinion of those Witnesses they thought most intelligent, and the best able to answer them from their long Experience on the Coast where we were: Therefore I will examine what Matter arises in the Course of this Enquiry, and state it whether for or against me, for their Lordships Consideration.

CAPT. *Barron* (*b*) being asked, Whether I acted best for his Majesty's Service to lay still in *Fort St. David's* Road, or would it have been better to have gone to Sea; Answers, He should have thought it best to have gone to Sea, because we were intermix'd with several Merchant Ships: When he is called upon to name those Ships, he admits, there was only a Victualler (*i*), with an arm'd *India-man* of the Squadron; and owns we lay in a proper Birth to have sail'd upon any Occasion.

LIEUT. *Cowe* (*k*) being asked, whether I would have acted best by going to Sea

(*b* p. 89) (*i* p. 90) (*k* p. 97).

with

with the Land-Wind in the Morning, or with the Sea-Breeze ; Answers, either in the Morning or in the Afternoon at half an Hour after Four ; by which he makes the sailing in the Morning a Matter of Indifference ; since I am justified in the Opinion of the Court, for my Conduct after the Enemy came in Sight, and it has not been said by any one Witness, that it was possible to get to Windward after the Sea-Breeze set in.

THESE two are the only Opinions against me in this Matter, and considering how they are founded, with the extraordinary and contradictory Evidence of their Authors, seldom or ever agreeing with any one Witness, I look upon them as insignificant, and as the absurd Dictates of ignorant Men.

ON the contrary, the Opinions in my Favour, are extremely full and well supported.

CAPT. *Parker* (*l*) an intelligent good Officer, being asked, Whether I was to

(*l* page 74).

blame

blame according to the best of his Judgment, in not going out before I did; Answers, He never apprehended I could have had any Advantage by failing. The Court not satisfied with his Answer, calls upon him again, as an Officer who must form a Judgment whether he thinks I did as well for his Majesty's Service by laying still, as if I had gone out; and he affirms upon his Honour, that I did better. Then being required to give the Court his Reasons (*m*) for thinking so, he says, because it must have been impossible for me not to have fallen to Leeward of *Fort St. David*; and the *French* were watching every Opportunity to attack that Fort with Land-Forces: They might have taken *Cuddalore*, it was open and Defenceless in some Part of it.

CAPT. *Weston* (*n*) being asked, Whether he thinks I would have acted better for his Majesty's Service by going to Sea any Time that Day, than by laying still; Answers, that I could not have answered for the Loss of *Fort St. David*, if I had quitted it, be-

cause I might have fallen to Leeward if I had gone into the Offing. Then he is asked, Whether I was not as liable in the Evening when I sailed from thence, to leave the Place subject to the Enemy's Pleasure, as if I had sailed before; and he says, I came to Anchor Half-way between *Ponticherry* and *Fort St. David*, and it was easier to get back from thence than if I had gone into the Offing.

CAPT. *Brown* (o) being complimented by the Court, as knowing the Coast very well, is asked, Whether at that Time he thinks I acted best for his Majesty's Service in laying still, or that it would have been acting better to go to Sea; Answers, In his private Opinion, I took the most advisable Step by doing as I did. I could not have got to Windward if I had gone out, nor thinks I could have fetched *Fort St. David* again.

THESE Witnesses having been long in the *East-India* Company's Service, are perfectly well acquainted with the Coast, and

from the Clearness and Perspicuity throughout their whole Evidence, seem'd to give great Satisfaction to the Court; and yet contrary to what they have offered, either by the Testimony of Facts, or Opinion well founded, I have been censured.

WHICHSOEVER Way I examine this Part of my Charge, with the Evidence given upon it, I am convinced of my Innocence, and it is impossible to reconcile it to my Sentence.

I HAVE already observed, that the Court by their Resolutions have acquitted me, for not failing after the Sea-Breeze set in, which was some Time before the Enemy appeared in Sight of his Majesty's Squadron; consequently, that I need not dwell longer on that Subject; were I not apprehensive there is something arisen in the Course of the Enquiry, which may serve to confound the supposed Utility of failing in the Morning with that in the Afternoon.

TO

TO explain myself; before we left the *East-Indies*, a malicious Report had been put abroad by some of the Captains, (q) that I had been advised at a Council of War, held when the Enemy appeared in Sight, to sail immediately, and did not.

THE Result (r) of this Council was sign'd by all the Captains, in which there is no mention made of any such Advice having been given, or our sailing; but that we perceived the Enemy to be coming down upon us: Hence it would have been absurd to have mentioned Sailing, because the Consequence of the Enemy's coming to attack us, was that of our getting under Sail, and forming into a Line of Battle, in order to receive them. It is not hinted, nor can it be thought I would have suffered the Enemy to engage me at such an Advantage on their Side, as that of our lying at Anchor.

THE Captains *Holmes* and *Parker*, together with the Secretary Mr. *Haman*, who assisted at that Council, declare, (s) They

(q p. 151) (r p. 137) (s p. 137).

neither

neither gave, nor heard any such Advice given. But supposing it had, tho' it might be adviseable to sail while the Enemy were coming down upon us, or we had the least Chance to force them to an Engagement, it could be no longer so, after they had hauled their Wind and kept to Windward; which is admitted to have been done after the Council separated, by all the Witnesses examined on this Point; and it is confirm'd by the Resolutions of the Court, that have in this Matter so amply justified me.

It has been proved and not contested, That while the *Eltham's* Men were distributing among the rest of the Squadron, according to the Result of the first Council of War, a Gale of Wind came on, so that to have got to Sea, we must either have cut or slipt. It has been likewise proved, that it was impossible to get to Windward against Wind and Current in order to force the Enemy to an Engagement.

In this Situation, and under these Circumstances, the Captains are called on board of me a second Time, about Duskish, when
Capt.

Captain *Boys* (*t*) says I asked them their Opinions, how we should act to intercept the Enemy's getting into *Ponticberry*, and that he answered me, by getting between it and them. He further says that the Captains *Powlett*, *Amberst* and himself, express'd their Surprize at my not going to Sea sooner, and at my asking their Opinions a second Time—but that I answered, if we had gone out we could not have come up with the Enemy.

BEING asked whether any of the rest of the Captains found Fault, he answers (*u*) he cannot recollect, but that there was a great deal of Discontent observed in general by every Body.—Captain *Amberst* (*v*) being asked whether he expressed any Surprize to me on this Occasion; Answers, That he did; and that the Captains *Powlet* and *Boys* said, they thought to have been under Sail before that.

I HAVE stated this Evidence to shew, that these Gentlemen who, as they have al-

ledged themselves, impeach'd and arraign'd my Conduct, even to my Face, for not sailing in the Afternoon immediately after the first Council of War was held, did not pretend to do it for not sailing in the Morning with the Land-Breeze: By which it is manifest, the Opinions of the Court and these Witnesses in this Matter are directly opposite.

CAPT. *Nucella* (*w*) says, That being on board of me about eleven o'Clock, among other Things that passed in Conversation, having taken the Liberty to ask me, If I did not think of going to Sea as soon as the Enemy should appear in Sight, I did not seem averse to it, but gave no positive Answer; and that he should reply, Surely we shall go to Sea when we shall see them; for if they come to attack us, they will do it at a great Advantage.

WHEN this Conversation was, the Land-Breeze had ceased, and it is not likely, if he had thought I had not acted properly by

not taking that Opportunity to get into the Offing, but that he would have hinted at it. In short, whatever Discontent or Murmuring is pretended to be shewed by these Gentlemen for not sailing sooner, after the first Council of War was held, there is not the least Shadow of Proof, that any Fault was found by them, for my not sailing in the Morning.

MEN who took upon them to treat their Commanding-Officer with so little Decency and Respect as they have done me, could not on this Occasion have been withheld from expressing their Dislike, had there been any Room for it.

TO be told that I asked their Opinions (x) too late, and that they were not upon a Footing to give them unask'd; To find they (y) were gone off on board their Ships on so extraordinary an Occasion as an Alarm being made by firing of Guns, and burning of false Fires at Midnight, without their sending to acquaint me, or their coming to receive my

Orders ; And above all, their Insult in rejecting at a Council of War the Governor of *Fort St. David's* Letter (z), whose Intelligence my Instructions directed me to regard, and which I thought proper Matter for their Consideration, are such glaring Instances of their factious Spirit and perverse Disposition towards me, that they can never escape their Lordships Observation and Censure.

HAD I been to blame for not failing in the Morning in the Opinion of Men of this Cast, so very prone to insult and asperse, and ever watchful to put false Colours on my best Endeavours, it is impossible to think they would have let so fair an Opportunity escape them. This being duly considered, I flatter myself their remarkable Readiness to speak against me, whether by Insinuation or consequential Surmises, will be imputed to the Dictates of Prejudice and Prepossession ; at least their weak and insufficient Proofs can have no Weight in Contradiction to the competent Testimony of those Witnesses who speak positively, and can-

not be supposed to be excited by any other Motive than that honest Courage and Independance of Mind which enable a Man to speak Truth.

THEIR Lordships are sensible how I have solicited and pressed the coming on of my Tryal, ever since my Arrival in *England*; and that as my Charge was founded on a private Letter from my Prosecutor to the Duke of *Bedford*, Ways and Means might have been found, perhaps, to wave my Tryal, or at least to protract its coming on; but as the whole Tenor of my Conduct hath been otherwise, I must have acted under a Spirit of Infatuation, had I been conscious of any Guilt, or that there was any Foundation for the Charge against me.

I MUST own, when I was upon my Tryal, having then the Gout upon me, I was not so inquisitive and circumspect as my Circumstances required; and knowing my own Innocence, I became too confident of an honorable Acquittal; nay, my very Enemies, even those who gave the strongest
Evi-

Evidence against me thought that would be the Case. And the Matter of my Charge for not sailing in the Morning I thought slight and ridiculous, and had learned to treat it with the greatest Neglect and Indifference, consequently I could have defended the Rectitude of my Conduct in that Point much better than I did, had I dreamt of the criminal and unfair Construction that would be put upon it. But I took that Part of my Charge, when and after the Enemy appeared in Sight, most into Consideration, as observing the Prosecutor and his Witnesses to lay the greatest Strefs upon it: In this I was greatly mistaken, for in the one I was justified, and in the other censured.

WHEN the Evidence for the Crown had been examined, I apply'd (a) to know the particular Point in which the Court was unsatisfied with respect to my Conduct, that I might take up as little of their Time as possible; but this being thought an unreasonable Request, I still inadvertently continued to look upon the Sailing with the

(a page 114).

Land-Breeze in the Morning as a Matter of Indifference.

I SHOULD not have asked this Favour of the Court, but I had observed they had closed the Evidence for the Crown, and in that, had declared their Satisfaction, (*b*) as well as in the Point of the Rothers being unhung: And as they did it in one Case, especially in Matter against me, I humbly apprehended they would do it in another, which would have put me on my Guard; and I had the more Reason to expect this Justice; For it is well known to be a Maxim in Law, that the Judge is Council for the Prisoner, and not for the Prosecution.

THE several Articles of my Charge (*c*) were read separately to the Witnesses for the Crown, and they were asked what they knew of the Facts, or that Matter. This was a very extraordinary Method of examining, and if it was just, which I am far from saying it was not so, by the same Parity of Reason, my Answers (*d*) in my Defence to the several

(*b* p. 114, 56) (*c* p. 3, 12, 15, 19, 30, 32, 34, 35, 45, 56, &c.) (*d* p. 115 to p. 137.)

Articles of the Charge, ought to have been read to my Witnessess, and they should have been ask'd what they knew relating to my Answers, but there was no such Thing done.

THE Courts in *Westminster-Hall*, and I am told it is Law, give the Prisoner all the Satisfaction and convincing Proofs in their Power of the Fairness and Impartiality of their Proceedings; and if by Inadvertency, want of proper Talents, or Utterance to explain and support his own Innocence, he falls short of making a proper Defence, he is always assisted by the Court.

THIS being the Case in all other Courts, how much more Reason had I to expect the utmost Satisfaction in what I presumed to ask, from a Court of Equity and Honour, not fetter'd with the Rigour of the Law? The Denial of which, with the Security of my Innocence, deprived me of the Opportunity of defending better that Part of my Conduct, which has fallen so severely under their Censure, and by which Means I have
been

been so unwarily surprized into a Snare that drill'd me on, as it were to abandon my own Preservation.

I have already stated the Strength of the Enemy upon the Intelligence received, according to the Evidence given; and as it appears I had all the Proofs in the World to expect their coming as an offensive Enemy, and not as Run-aways, it became me to endeavour to strengthen myself as much as possible, 'till the Time of their Appearance, or that of giving or receiving Battle.

ADMITTING this to be a proper and just Foundation for my Conduct in not failing with the Land-Breeze in the Morning, which I hope it will be found to be by their Lordships, it follows, if the Enemy, when they came in Sight of our Squadron, appeared to be inferior to that which the Intelligence bespoke them, that with Justice and Impartiality, I am not at all answerable.

AND as this Matter has been attempted to be proved by the Captains *Boys* and *Am-*

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herst,

berst, whose Evidence on this Occasion is full of Absurdities and Contradictions, that I may leave nothing untouch'd, I will beg Leave to state, and submit it to their Lordships, how far by this, they have proved themselves prejudiced Men.

CAPT. *Boys* (e) being asked, Whether the Enemy stood so near as to enable them to form a Judgment of their Strength as well as Number; Answers, They appeared large all of them, except two and a Sloop; all Ships of Force; at another Time he says, (f) they appeared to be five large Ships, and two about the Size of the *Medway's* Prize; all in a regular Line: And again being asked, How he could suppose our Squadron was superior, when we had but three Sixty-Gun Ships, and two Fifty, and the Enemy were nine Sail; he Answers, (g) The Enemy were all Bagatel Ships, in the Face of an Enemy of Force, and he knew they were Merchant Ships fitted for War.

HERE, tho' upon Oath, he contradicts himself three several Times, and if he had

(e p. 20) (f p. 22) (g p. 26).

been

been interrogated more on this Point, every Time he had answered, it cannot be doubted but he would have lessen'd their Strength.

CAPT. Amberst (*b*), being asked, Whether he could form any Judgment of their Force; Answers, He thinks he could, for in talking with his Officers what they took them for, one Ship appeared larger than the rest, about forty or fifty Guns, and looked like one of our *India* Ships; by which he would infer that the biggest Ship being so small, they were a Squadron of Merchant Ships.

WHAT these Gentlemen have sworn in this Particular cannot affect me, but themselves, and will for ever expose them; as it serves to shew their Falshood and Prejudice against me; nay, I cannot but think that such Instances of Self-contradiction and Improbability given upon Oath, were sufficient to have invalidated all other Parts of their Testimony, (however consistent and concurrent they might be) in every Court of Judicature in the Nation.

(*b* page 35).

CAPT.

CAPT. *Parker* (i), who had the Advantage of two distinct Views of the Enemy, says, That it would not have been prudent in me to have engaged the Enemy, if I could, without one of the forty-Gun Ships, because he thinks we were then about equal with them; and I had a great deal to risque; if they had been successful, we should have lost all the Settlements; every Settlement must have fallen into their Hands, and *Bengal* too. They could lose Nothing—Upon which Mr. *Judge Advocate* is pleased to ask him, “Whether their Settlements would not “have been equally distress’d if they had “lost the Day”—And he answers him, No.

I do not quote this Evidence with any other Intention than in Contradiction to that of Capt. *Boys* and *Amherst*, relating to the Force of the Enemy after they came in Sight of us, and to inforce the Rectitude of my Conduct in endeavouring to strengthen ourselves as much as I could before the Appearance of the Enemy.

WHATSOEVER was the Force of the Enemy, it ought not to affect me, for even these Witnesses themselves, do not pretend to say, I could by any Means have brought them to an Engagement; all they have said amounts to this, that by my going into the Offing with the Land-Wind as Things happened, which I could not possibly foresee, I should be more in the Way of pursuing them and preventing their Designs.

ALL the Witnesses having agreed that our coming to an Engagement intirely depended on the *French*, and on nothing I could do, it is altogether unnecessary for me to state the concurrent Testimony of the whole Evidence, with the Facts on which the Resolutions of the Court in my Favour are grounded; and which have so fully justified me in this Part of my Charge.

I SHALL only take Notice, that Lieut. *Frazier* (k), who was then Master of my Ship, swears, I gave him Orders to watch the Motions of the Enemy, and let me know when we could lye within two Points of

(k page 107).

them:

them: This is confirm'd by his Mate Mr. *Martin* (l), who heard me give him these Orders with the Circumstances of sending him upon the Poop to look out, and ordering every Thing ready for weighing.

THE Court have been pleas'd by their 13th Resolution (m), to declare it as their Opinion, " That by failing in the Morning
" I should have been better prepared to
" avoid the Enemy.

HAD I known the Force of the Enemy to be much greater than it was, this Consideration, I must confess, never would have enter'd into my Head; nor is it hinted, I took any such Measure; for lying at an Anchor till there was a Probability of fetching them, could never be the Way. If I had failed and had done my utmost to force them to an Engagement, and they had got away in spite of all I could do, which would have been certainly the Case; possibly there might even then been more Room for Malice and Ill-nature of that Sort; but as it is, tho' I am censur'd, I am so far happy, that

it cannot be said, I avoided the Enemy, or took the least Step towards it, but lay ready to catch the Occasion of coming at them.

THE Court having likewise declared it to be their Opinion by their 12th Resolution, " That by not sailing in the Morning I gave the Enemy an Opportunity of prosecuting their Designs without Interruption.

I MUST take the Liberty to say, it does not appear by Evidence, or any Circumstance, there was any Thing I could do, which could prevent their landing Men or Money; and that to have interrupted their Designs did not in the least depend on my Sailing; therefore I must also add, that this Opinion is not well grounded. As a full Proof of which, there is not one Witness, that says they could not have landed their Men and Money at Carrical, without my preventing the same, or gone to Madras to have done it, without so much as our seeing them: Even Mr. Cowe (n), severe as he is against me, does me this Justice; and his Testimony is confirmed by Capt.

(n page 102).

Hutchin-

Hutchinson; (o) and as they are not contradicted by any one Witness of the whole that were examined, it is unnecessary to recite any other Proof, or use any more Arguments on this Occasion.

BUT while I am on this Subject, I can't pass by, what is maintained in the 8th Article of the Charge; "That by his Majesty's Enemies Landing Men, Money and Ammunition, for the Support of their Garrisons on Shore, they were prepared to frustrate the Attempts, which I knew were intended by his Majesty's Forces against these very Garrisons." No such Thing was attempted to be proved against me; and tho' the Court came to Resolutions upon the several Articles of my Charge, previous to their pronouncing Sentence, yet they have omitted doing me that Justice by a Resolution in my Favour.

THE Gentleman who preferr'd the Charge against me, made this Compliment to another Officer, at my Expence: For tho' I doubt not, but his Majesty's Arms were

conducted by him, as well as they could have been by the most able Officer; yet I aver, there was nothing done by the Enemy's Squadron, which appeared in my Sight off *Fort St. David*, that could either retard or prevent his Success.

I COME now to the 22d Resolution of the Court, which declares it to be their Opinion, "That I ought to have sent out a "Cruizer to have watch'd the Motions of "the Enemy."

THERE has been much urged in Regard to the Utility of sending out a Cruizer; and it has been said in the Evening when it blew so hard, that we could not purchase our Anchors, I was advised to do so. To recapitulate all the Evidence, absurd and contradictory as it is on this Point, would tire their Lordships Patience. But admitting such Advice had really been given me, it is sufficient to observe, that the Court have not given it as their Opinion, that to have followed it would have answered any Purpose. And for this Reason, I humbly apprehend they did not, because they knew

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that

that a Frigate to be of any Use in so dark a Night as that was, must at least have been within a small Gun-shot of the Enemy : For my own Part, I cannot think there appear'd the least Probability that it could be of Use unless both Squadrons had been under Sail, and even then it would have been extremely uncertain. As to doing it in the Morning it was absolutely unnecessary; and as to doing it at Night, when we only waited the Wind's abating for the whole Squadron to go to Sea, it would have been a ridiculous Attempt, and could only have served to have silenced the Clamour of Men, who have watched every Opportunity to find Fault, and represent every Action of mine in its worst Light.

BUT upon the whole, there is not a Witness that says, that a Frigate could have kept Sight of the Enemy, or been of any Use without our Squadron had gone to Sea; neither is the Evidence on this Point positive or full, but Conjectural and Consequential: And Captain *Nucella* (q) admits

(q page 64)

that

that the *Lively* (the only Frigate I had to send) being foul, would have made a bad Hand of it.

CAPT. *Parker* (r) who seem'd to give great Satisfaction to the Court, by their many approving Expressions on his Evidence, and who had seen the Enemy twice, as well as having been chased by them, consequently somewhat a better Judge of this Matter than any other Person in the Squadron, affirms, they might have kept him at what Distance they pleased, admitting he had been sent out in the Morning.—And being asked, whether (s) he could have got near enough to have kept Sight of them, and made me Signals; he answers, that the best sailing Ship of the Squadron could not have got a Mile to Windward. The Court still persevering in their Questions on this Part of my Charge, interrogates him again, whether, (t) If he had been sent out in the Morning, he could have made Signals to our Squadron and kept Sight of them in the Night, still he answers that he did not apprehend it was

(r P. 73) (s P. 73) (t P. 74.)

possible ;

possible: the Night being very dark, and it was always in their Power to make it impracticable for him to come near enough to keep Sight of them.

HAVING thus gone through every Part of the Charge, so far as it relates to the Judgment that has been passed on my Conduct, either as it has fallen under the Examination of the Court, or their Resolutions against me, I cannot but think, I have been censured against all Evidence, against all Arguments, against all Truth, and every Circumstance that conduces to it; and I flatter myself I have omitted nothing that is necessary to prove my Innocence to the Satisfaction of *their Lordships*.

I HAVE the greatest Honour and Regard for the Court imaginable, and shall always pay the greatest Deference to all the Proceedings and Decisions of Courts-Martial; even the Censure of this Court, and my Misfortune, I bear with Patience and Submission. And I cannot but believe their Censure has been drawn upon me by unlucky Incidents, and, perhaps, in a great mea-

fure, from my not explaining and supporting the Juſtneſs of my Cauſe in a Manner whereby they could perfectly underſtand the Truth of it: So I doubt not, but they will be pleaſed that I have this Opportunity of defending my Innocence, and clearing it from the Miſtakes and Prejudice under which I am unhappily oppreſs'd by their Sentence: Nor can their Honour be concern'd, if I am acquitted by their Lordſhips of the Crime of Negligence, if it appears to them to be ill ground'd. But as I am ſenſible how hard it is to defeat the Sentence of a Court-Martial, if on that Account, or any other, of which I am no competent Judge, there ſtill ſhould be thought by their Lordſhips to be the leaſt Probability in the Proofs againſt me, I am confident, it can never with Juſtice be deem'd Negligence: For if it was any way neceſſary to paſs a Censure upon me, and there ever was Room to ſuppoſe a Miſtake of Judgment ariſing from the Impoſſibility of foreſeeing in the Morning that the Enemy would avoid me, ſurely this was the Time to admit it: And I humbly hope, that even in this Caſe, that my paſt Sufferings will be look'd upon as a

much greater Punishment than I have deserved.

AFTER Forty Years Service without Blemish or Censure, to be thus discarded, when I least expected it, is a Wound I was not prepared to receive; and in all my Experience, or by what I have been able to learn, there never was so rigid a Sentence passed. I have to beg their Lordships Humanity may not be check'd by the unavoidable Length of this my Case; that they may be able to come to a candid and deliberate Discussion, and make such Intercession with the King, as his Majesty may be graciously pleased to remove my Suspension, or such as may seem to their Lordships to be just.

To conclude, I flatter myself, whatever I have mentioned that may not carry with it all imaginable Force, and give their Lordships a full Knowledge of my unfortunate Case, will be imputed to the Anxiety and Apprehensions of a Man who has been disgraced and dishonoured by so ignominious
a Judg-

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a Judgment. I have only to add, that it will be found on the strictest Examination, I have recited the Evidence with the utmost Impartiality, and as near as possible a Man's Testimony can be taken from Question and Answer, I have adher'd to the Words of the Witness.

I am,

S I R,

Your most humble Servant,

*Hollis-Street,
March 11th, 1751.*

THO. GRIFFIN.

judgment. I have only to add, that it will
be found on the first Examination, I have
checked the History, the names, and the
dates, and it is a matter of course, that
Testimony can be given from Question and
Answer. I have adhered to the Words of
the Witnesses.

I am,

S. I. R.

Your most humble servant,

THO. GRIFIN.

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